DATE: June 28, 1993
CASE NO. 92-ERA-47

IN THE MATTER OF

ERIC ELLIOTT,

COMPLAINANT,

v.

ENERCON, SERVICES, INC.,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

Before me for review is the Recommended Order Approving Settlement (R.D. and O.) of the Administrative Law Judge (ALJ) in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). The ALJ recommended approval of the Joint Motion to Approve Settlement and Release Agreement, and dismissal of the complaint.

By Order dated January 5, 1993, the parties were instructed to submit a copy of a memorandum to Complainant's file which was referenced in Paragraph 2 of the Settlement and Release Agreement (Agreement) of October 7, 1992, but was not submitted into the administrative record. Counsel for Respondent, counsel for Complainant, and Complainant, each submitted a copy of the Memorandum dated September 1, 1992. Complainant's response letter of January 17, 1993, indicated concerns over the memorandum during settlement negotiations, *i.e.*, Respondent "refused to incorporate the terms of the memorandum within the agreement text or make the memo more binding." *See* Complainant's letter of January 17, 1993, with Memorandum attached. Complainant further expressed concern that he cannot now work at

Arkansas Nuclear One (ANO) due to the terms of his settlement.

The terms of the Agreement, including the Memorandum

referenced therein, have been carefully reviewed and the following discussion clarifies my interpretation of the terms. I note that the Agreement may encompass the settlement of matters arising under various laws, only one of which is the ERA. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, and the cases cited therein, my review of the Agreement is limited to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the ERA.

The Agreement states that it "shall be interpreted, construed and enforced in accordance with the laws of the State of Oklahoma, without regard to the conflict of law rules thereof." Agreement at 2, Paragraph 8. I interpret this statement as not limiting the authority of the Secretary or the United States district court under the statute and regulations. *See* 42 U.S.C. § 5851(d); 29 C.F.R. § 24.8(a); *Phillips v. Citizens Association for Sound Energy*, Case No. 91-ERA-25, Final Order of Dismissal, Nov. 4, 1991, slip op. at 2. Additionally, the provision in Paragraph 6 of the Agreement, stating that "Agreement can be modified only after obtaining the written consent of all parties thereto," is interpreted to include the requisite approval of the Secretary. *See* 42 U.S.C. § 5851(b)(2). Finally, Complainant's concerns over the effect of the memorandum incorporated into the settlement agreement are not persuasive. [1] The memorandum is expressly referenced in the Agreement and is a binding term of the Agreement. As interpreted and construed herein, I find the terms of the settlement entered into by the parties to be fair, adequate and reasonable, and I approve the Agreement.

Accordingly, this case is DISMISSED.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] I note that the Secretary has considered the issue of whether one party may disavow a settlement before the Secretary has reviewed it, specifically addressing a claim of lack of consent and attorney coercion. *Macktal v. Brown & Root*, Case No. 86-ERA-23, Sec. Order Rejecting in Part and Approving in Part Settlement Between the parties and Dismissing Case, Nov. 14, 1989, slip op. at 4-10. The Secretary's disposition on that issue was expressly upheld. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1157 (5th Cir. 1991). The record here similarly contains no showing of coercion or other impropriety that would justify renunciation of the settlement agreement. *See generally San Joo Kim v. The Trustees of the University of Pennsylvania*, Case Nos. 91-ERA-45 and 92-ERA-8, Final Ord. Approving Settlement Agreement and Dismissing Cases,

June 17, 1992, slip op. at 3-4.